

## WHAT SHOULD I KNOW IF I AM ARRESTED?

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### 1. What is an arrest?

When you are arrested, you are taken into custody. This means that you are not free to leave the scene. Without being arrested, however, you still could be detained or held for questioning for a short time if a police officer or other person believes you may be involved in a crime. For example, an officer may detain you if you are carrying a large box near a recent burglary site. Storekeepers also can detain you if they suspect you have stolen something.

Whether you are arrested or detained, you do not have to answer any questions except to give your name and address and show some identification if requested.

### 2. What rights do I have?

Whether you are an adult citizen or non-citizen, you have certain rights if you are arrested. Before the law enforcement officer questions you, he or she should tell you that:

¥ You have the right to remain silent.

¥ Anything you say may be used against you.

¥ You have a right to have a lawyer present while you are questioned.

¥ If you cannot afford a lawyer, one will be appointed for you.

These are your Miranda rights, guaranteed by the U.S. Constitution. If you are not given these warnings, your lawyer can ask that any statements you made to the police not be used against you in court. But this does not necessarily mean that your case will be dismissed. And this does not apply if you volunteer information without being questioned by the police.

### 3. Once I'm told my rights, can I be questioned?

You can be questioned, without a lawyer present, only if you voluntarily give up your rights and if you understand what you are giving up. If you agree to the questioning, then change your mind, the questioning must stop as soon as you say so or as soon as you say that you want a lawyer. If the questioning continues after you request a lawyer and you continue to talk, your answers can be used against you if you testify to something different.

You may be required to give certain physical evidence. For example, if you are suspected of driving under the influence of alcohol, you may be requested to take a test to measure the amount of alcohol in your system. If you refuse to take the test, your driver's license will be suspended and the refusal will be used against you in court.

Once you have been booked, (meaning your arrest has been written into official police records, and you have been fingerprinted and photographed) you have a right to make and complete three free telephone calls within the local dialing area. Any additional calls made from jail must be collect calls.

### 4. When should I see a lawyer?

If you are arrested for a crime, particularly a serious one, you should contact a lawyer as soon as possible. He or she has a better sense of what you should and should not say to law enforcement officers to avoid being misinterpreted or misunderstood. The lawyer also can advise you or your family or friends on the bail process.

## 5. How can I find a lawyer?

If you can afford a lawyer but do not know one, ask a friend, co-worker, employer or business associate to recommend one.

Or, call a State Bar-certified lawyer referral service in your area. Look in the Yellow Pages of your telephone directory listings under "Attorney Referral Service," or contact the local bar association. For an online list of such services, visit the State Bar's Web site at [www.calbar.ca.gov](http://www.calbar.ca.gov).

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of State Bar-certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet certain standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or initial consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill.

If you belong to a legal insurance plan as an individual or through your company, labor or credit union, the plan may provide a lawyer to represent you. Ask for a lawyer who is qualified in criminal law.

For more information, see the State Bar pamphlet ***How Can I Find and Hire the Right Lawyer?*** To find out how to order a free copy of this pamphlet and other State Bar consumer education pamphlets, call 415-538-2280 or send an e-mail to [pamphlets@calbar.ca.gov](mailto:pamphlets@calbar.ca.gov). Or visit the bar's Web site at [www.calbar.ca.gov](http://www.calbar.ca.gov). The pamphlets also can be ordered in bulk.

## 6. What if I can't afford a lawyer?

The U.S. Constitution guarantees everyone charged with a crime the right to legal counsel. A public defender, or other court-appointed attorney, will be appointed for you if you cannot afford to hire an attorney on your own.

Public defenders are experienced trial attorneys who specialize in criminal law. They do not work for the prosecutors or the police; they are there to represent your best interests.

## 7. Who can arrest me?

All law enforcement officers (such as police officers, county sheriff officers, investigators in a district attorney's office or an attorney general's office, and highway patrol officers) can arrest you whether they are on or off duty, in most cases. A probation or parole officer also can arrest you.

They can arrest you even if they do not have an arrest warrant—if they have probable cause or good reason to believe you committed a felony. (A felony is a crime of a more serious nature than a misdemeanor, usually punishable by imprisonment for more than a year. A misdemeanor is usually punishable with a fine or short jail term.) They do not have to see you commit a felony in order to arrest you. They do, however, have to see you commit a misdemeanor in order to arrest you.

If you commit an infraction, they may ask you to sign a citation or notice instead of taking you into custody. This is a minor offense, such as a moving violation, where the punishment usually is a fine. If you sign the citation, you are not admitting guilt; you are only promising to appear in court. If you have no identification or refuse to sign, however, an officer may take you into custody.

## 8. Can someone other than a law enforcement officer arrest me?

Any person, such as a private security guard, can make a citizen's arrest if he or she sees a misdemeanor being attempted or committed. He or she also can make a legal arrest for a felony as long as it actually was committed, and he or she has good reason to believe you did it. He or she must take you to a police officer or judge who is required by law to take you into custody.

#### 9. When is an arrest warrant used?

Usually, a warrant is required before you can be taken into custody from within your home. But you can be arrested at home without a warrant if fast action is needed to prevent you from escaping, destroying evidence, endangering someone's life or seriously damaging property.

An arrest warrant must be signed by a magistrate or judge, who must have good reason to believe that you committed a crime.

Once an arrest warrant is issued, any law enforcement officer in the state can arrest you—even if the officer does not have a copy of the warrant. Generally, there is no time limit on using a warrant to make an arrest.

Before entering your home, a law enforcement officer must knock, identify him or herself and tell you that you're going to be arrested. If you refuse to open the door—or if there's another good reason—the officer can break in through a door or window.

If the police have an arrest warrant, you should be allowed to see it. If they don't have the warrant with them, you should be allowed to see it as soon as is practical.

The police may search the area within your reach. If you are arrested outdoors, they may not search your home or car.

Resisting an arrest or detention is a crime. If you resist arrest, you can be charged with a misdemeanor or felony in addition to the crime for which you are being arrested. If you resist, an officer can use force to overcome your resistance or prevent your escape. The officer can even use deadly force if it appears you will use force to cause great bodily injury.

#### 10. When can I be released?

If, during the questioning and before a charge is filed, the police are convinced that you have not committed a crime, they will give you a written release. Your arrest then will be considered a detention and not be recorded as an arrest.

#### 11. What is bail and how is it set?

The amount of *bail*—money or other security deposited with the court to insure that you will appear—is set by a schedule in each county. For some traffic citations, you may be notified that you can forfeit or give up bail instead of appearing in court. However, if you have any doubt, go to court so a new warrant is not issued for your arrest for failing to appear.

Bail forfeiture does not apply to misdemeanors or felonies, and you must appear in court. If you fail to appear, your bail will be lost and a new warrant will be issued for your arrest. For traffic citations, a "bail forfeiture" works as a conviction for the traffic violation.

Officers at the jail may be able to accept bail. If you cannot post or put up the bail, you will be kept in custody. Depending on where you are arrested, you may have the opportunity to request a bail reduction through a bail commissioner.

When you are taken to court for bail setting or release, the judge will consider the seriousness of the offense with which you are charged, any prior failures to appear (even for traffic tickets), any previous criminal record and your connections to the community, as well as the probability that you'll appear in court. Generally, the amount of bail is set according to a written schedule based on your charges.

Instead of paying bail, you might be released on your own recognizance or "O.R." (or "supervised O.R."). This means that you do not have to pay bail because the judge believes that you will show up for your court appearances without bail.

#### 12. Who maintains arrest records and what do they include?

Local police departments and the state Department of Justice keep arrest records. According to law, they cannot show such records to anyone except law enforcement officers, and may only show records of your convictions to certain licensing agencies which have a right by state law to investigate your criminal background.

The arrest record includes when and why you were arrested, whether the charges against you were dropped or whether you were convicted of the charges and the subsequent sentence imposed. Both pleading guilty and being found guilty after a trial count as convictions.

If you are convicted of a crime, are placed on probation and successfully complete the probation, you may be able to have the conviction set aside and the case dismissed. This may be helpful for employment background checks after the probation is completed.

If you are convicted of certain felonies and you successfully complete probation, you may ask that the felony be reduced to a misdemeanor. Your attorney will be able to assist you in reducing or possibly expunging your record.

### 13. What happens at an arraignment?

You have a right to be arraigned without unnecessary delay—usually within two court days—after being arrested. At the arraignment, you will appear before a judge who will tell you officially of the charges against you. An attorney may be appointed for you if you can't afford one, and the bail can be raised or lowered depending on the circumstances of the case. You also can ask to be released on O.R., even if bail was previously set.

If you are charged with a crime and are unable to understand English, you have a right to an interpreter throughout the proceedings.

If you are charged with a misdemeanor, you can plead guilty or not guilty at the arraignment. Or, if the court approves, you can plead *nolo contendere*, meaning that you will not contest the charges. Legally, this is the same as a guilty plea, but it cannot be used against you in a non-criminal case unless the charge can be punished as a felony.

Before pleading guilty to some first-time offenses, such as drug use or possession in small amounts for personal use, you may want to find out if your county has any drug diversion programs. Under these programs, instead of fining you or sending you to jail, the court may order you to get counseling or to attend and complete a drug treatment program, which could result in dismissal of the charges if you complete the counseling and/or program.

If the misdemeanor charges are not dropped and you do not enter a plea of guilty or no-contest, a trial will be held. The process is a little different if you have been charged with a felony. If the felony charge is not dropped and you do not plead guilty or no-contest, you usually will face a preliminary hearing before your case can go to trial. And there will be another court appearance to try to end the case with a guilty or no-contest plea or dismissal of charges before it goes to trial.

### 14. What happens at a preliminary hearing?

During the preliminary hearing, usually within 10 court days of the arraignment, the district attorney's office must present evidence showing a reasonable suspicion that a felony was committed and that you did it. The judge must be convinced that there is sufficient evidence to bring you to trial. If the judge does not dismiss the charges after the preliminary hearing, a jury trial date will be set.

### 15. When can an officer conduct a search?

An officer can always conduct a search with either your consent or a search warrant. You have a right, however, to see the warrant before the search begins.

### 16. When can an officer search you, your home or your car without a warrant?

¥ Body Searches. If you are arrested, an officer can search you, without a warrant, for weapons, evidence or illegal or stolen goods. Strip searches should not be conducted for offenses that do not involve weapons, drugs or violence unless police reasonably suspect you are concealing a weapon or illegal goods, and they have authorization from the supervising officer on duty. If you are booked and jailed, you may undergo a full body search, including body cavities.

¥ Home Searches. In emergencies, such as when an officer may be trying to prevent someone from destroying evidence, your home can be searched without your consent and without a warrant.

If you are taken into custody in your home, an officer without a warrant can search only the limited area in which you are arrested. Other rooms—and even other parts of the same room—are off limits, unless the officer believes that other suspects are hiding in other rooms. While searching your home, an officer can seize evidence of any crime, such as stolen property or drugs, which is in plain sight.

¥ Car Searches. Your car and trunk can be searched without your consent or a warrant if an officer has good reason to believe it contains illegal or stolen goods or evidence. If the police stop your car for any legal reason—such as a broken taillight—they can take any illegal goods in plain sight.

If you, your home or your car is searched illegally, a judge might say that any evidence found during the search cannot be used against you in court. If you or your lawyer, however, do not object to the evidence before trial, the court might allow the evidence to be used. Even if the judge does decide that the evidence cannot be used against you, that does not always mean that your case will be dismissed.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.

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